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PACIFIC  **TELESIS**
Group-Washington

April 17, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

*Re: CS Docket No. 95-184, Telecommunications Services Inside Wiring
Customer Premises Equipment*

On behalf of Pacific Bell and Pacific Telesis Video Services, please find enclosed an original and six copies of their "Reply Comments" in the above referenced proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,



Enclosure

NO. 100-1000000000
10/1/96

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEB 17 1996

In the Matter of

Telecommunications Services Inside Wiring

Customer Premises Equipment

CS Docket No. 95-184

**REPLY COMMENTS OF PACIFIC BELL AND
PACIFIC TELESIS VIDEO SERVICES**

I. SUMMARY

Pacific Bell and Pacific Telesis Video Services ("Pacific") hereby submit reply comments in response to the Commission's Notice of Proposed Rulemaking.¹ We advocate 1) broad access by video providers to private easements, 2) a change in the cable demarcation point, 3) a hands-off approach to regulation of technical standards, 4) the opportunity for premises owners to purchase cable inside wiring prior to service termination, and rejection of several commenters' incorrect takings arguments, and 5) preemption of state and local regulation of inside wiring.

¹ In the Matter of Telecommunications Services Inside Wiring, Notice of Proposed Rulemaking, CS Docket No. 95-184 (rel. Jan. 26, 1996) ("NPRM").

II. IN ORDER TO COMPETE WITH CABLE, WE MUST HAVE ACCESS TO PRIVATE EASEMENTS

Property owners contend they are not required to afford alternative video providers access to their rights-of-way. However, without such access, the notion of allowing video competitors into the market is purely illusory, because they will have no way to reach end users.

Recognizing that competition cannot flourish if providers do not have access to end users, the Commission recently has taken a strong stand in favor of allowing service providers access to public and private property.² We urge it to do the same here. In this regard, we second the comments of Marcus Cable Company³ to the extent they detail the “substantial barriers” property owners may erect against allowing video providers to wire MDU premises “by manipulating easements, delaying the release of dedicated easements, or litigating against access unless the operator pays a toll.”

III. THE LOCATION OF THE CABLE DEMARCATION POINT MUST CHANGE

Providers from virtually all sectors of the video market echo our proposal to move the MDU cable demarcation point to the point where common plant meets the wiring dedicated to the individual subscriber.⁴ Leaving the MDU cable demarcation point closer to

² Preemption of Local Zoning Regulation of Satellite Earth Stations, IB Docket No. 95-59, Report and Order, Further Notice of Proposed Rulemaking, FCC 96-78, ¶ 12 (rel. March 11, 1996) (supporting preemption of local regulation of satellite antennas).

³ Marcus Cable Company, American Cable Entertainment, et al. at 7-10; see also Continental Cablevision at 22.

⁴ E.g., USTA at 3, Independent Cable & Telecomm. at 20, MultiTechnologies Services at 2, RCN at 2, Optel at 10, Media Access Project and Consumer Federation of America at 10, US West at 5, State of New Jersey Board of Public Utilities at 6-7, Compaq at 36; Wireless Cable Ass’n at 11-12.

the end user -- e.g., inaccessibly located in a wall -- will only continue anti-competitive practices currently in existence and exclude new providers. On the other hand, the existing telephony demarcation point fosters competition and should not be changed.

The Commission should reject calls to give the MDU owner sole discretion to decide the location of the demarcation point.⁵ We will accommodate building owners, where feasible, but if they are able unilaterally to change the demarcation point, chaos will result. Further, we do not support the creation of multiple cable demarcation points, as some propose.⁶

The cable industry's comments in opposition to moving the demarcation point and giving end users more control over their inside wiring actually prove our point. We argued that such changes were necessary to ensure competitive access to wiring and give end users choices among providers. Continental Cable confirms its intent to prevent new entrants from gaining access to inside wiring: "If the Commission were to expand the cable demarcation point in MDUs, the prospect for broadband services competition in such buildings would be significantly undermined, since new entrants could assume control over existing hallway wiring, riser cables, and other MDU network infrastructure installed and maintained by cable operators."⁷ Continental's point -- that allowing new entrants access to its wiring will stifle competition -- is absurd. Continental's claim that the need for facilities-based competition justifies denying competitors access to its own wiring would freeze out any

⁵ Hampton Enterprises at 1.

⁶ BOMA, NRC et al. at 37-41.

⁷ Continental Cable at 2-3 (emphasis added).

competitor that does not incur the expense, and cause property owners the inconvenience, of installing duplicative inside wiring. This argument must be rejected.

IV. THE COMMISSION SHOULD NOT REGULATE CABLE CONNECTIONS

Especially because we are in an era of rapid technological innovation, the Commission should allow the market and industry standards setting bodies to develop connections used in video networks.⁸ Standards set today may be irrelevant tomorrow, and the delay caused by a standards-setting process will only delay the advent of competition. Moreover, too much standardization -- for example, in interdiction devices and other equipment that scrambles video signals -- will compromise the security of each provider's programming.

As long as basic safety considerations are regulated by means of the Commission's signal leakage rules, video providers should be free to develop their own means of establishing connections. Ultimately, we would support the industry's development of a universal connection block for the use of all providers which ensures that different connectors can be used harmoniously, but the Commission need not promulgate regulations in this area.

V. IT IS NOT A TAKING TO GIVE PREMISES OWNERS PRE-TERMINATION OWNERSHIP OF INSIDE WIRING

Several parties erroneously claim deregulation of cable inside wiring would constitute a taking of private property without just compensation.⁹ We disagree because cable

⁸ E.g., General Instrument Corp. at 30, GTE at 15.

⁹ E.g., Adelphia at 2, Home Builder's Ass'n of Maryland at 1, Cable Telecommunications Ass'n at 3, TKR Cable at 11.

companies will receive compensation for their wiring.¹⁰ The Fifth Amendment's takings clause does not permit private property owners to refuse to allow the use of their property; instead, it requires that such owners be compensated for such use.¹¹ Indeed, in the context of telephone home wiring, the Commission found no violation of the takings clause, because telephone companies were compensated for the inside wiring.¹²

As we stated in our opening comments, such compensation currently consists of reimbursement for the replacement cost of the wire. We believe these rules should be amended to include compensation for out-of-pocket costs such as labor and other materials associated with installing wiring.¹³ However, there should be no compensation for inherently speculative "lost opportunities," as some cable companies suggest.¹⁴

We have no objection to making the presumption that an end user owns his wiring rebuttable, so that a video provider can rebut the presumption in appropriate cases.¹⁵ If, for example, the provider can establish it did not receive compensation -- within the

¹⁰ See GTE at 19.

¹¹ Loretto, 458 U.S. 419 (1981) (remanding for calculation of just compensation for allowing wires to be installed on rental property; the Commission found that one dollar per building was adequate compensation since installation of cable service enhanced property's value); In the Matter of Detariffing the Installation and Maintenance of Inside Wiring, 1 FCC Rcd 1190, 1195 ¶ 30 (1986).

¹² In the Matter of Detariffing the Installation and Maintenance of Inside Wiring, CC Docket No. 79-105, Second Report and Order, 59 RR 2d 1143, ¶¶ 48-50 (1986).

¹³ Pacific's Opening Comments at 13; see also State of New Jersey Board of Public Utilities at 8.

¹⁴ Time Warner at 21; Continental Cablevision at 11; Cable Telecommunications Ass'n at 7.

¹⁵ AT&T at 10.

guidelines we propose above -- for the inside wiring, such evidence might rebut the presumption.

Once property owners¹⁶ have control over their wiring, they will have the ability to choose the provider to serve them, rather than being forced to deal with a sole provider. In this new, competitive environment, end users should have the right to install their own wiring according to an individual provider's specifications.¹⁷

Finally, at the time new rules are promulgated, the Commission must allow property owners the benefits of a "fresh look" at existing contracts. Otherwise, cable incumbents will be able to evade the new rules by locking MDU owners into long-term contracts before the rules are promulgated.

VI. THE COMMISSION SHOULD PREEMPT STATE AND LOCAL REGULATION OF BROADBAND INSIDE WIRING

We support maximum federal preemption of state and local regulation of inside wiring. The D.C. Circuit supports such preemption, ruling in NARUC v. FCC, that it is proper "to the extent that such regulation negates the federal policy of ensuring a competitive market in [simple telephony inside wiring] services."¹⁸ The states are also preempted from regulating complex telephony inside wiring.¹⁹ These holdings, in conjunction with the

¹⁶ We do not support giving renters ownership of inside wiring, but they should have "control" over their wiring such that they can choose the provider from which they receive service.

¹⁷ Providers should not be required to issue detailed customer installation materials, as some contend. Building Industry Consulting Service Int'l at 4. General specifications should suffice.

¹⁸ NARUC v. FCC, 880 F.2d 422, 431 (D.C. Cir. 1989).

¹⁹ In the Matter of Detariffing the Installation and Maintenance of Inside Wiring, CC Docket No. 79-105, 7 FCC Rcd 1334, 1341 (1992).

Commission's jurisdiction over disposition of cable wiring²⁰ and cable system signal quality,²¹ provide strong support for federal primacy in the area of cable inside wire regulation.²²

VII. CONCLUSION

The Commission should 1) guarantee new video entrants access to utility easements, 2) change the cable demarcation point to avoid the anti-competitive aspects of its current location, 3) refrain from dictating technical standards, 4) guarantee property owners the right to purchase cable inside wiring and reject the commenters' inappropriate takings claims, and 5) preempt state and local regulation of inside wiring to the maximum extent possible.

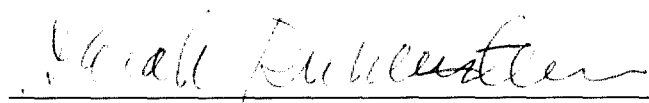
²⁰ 47 U.S.C. § 544(i).

²¹ *Id.*, § 544(e).

²² See also City of New York v. FCC, 486 U.S. 57, 64 (1988) ("The statutorily authorized regulations of any agency will preempt any state or local law that conflicts with such regulations or frustrates the purposes thereof"); In the Matter of Orth-O-Vision, Inc., Petition for a Declaratory Ruling, Memorandum Opinion, Declaratory Ruling and Order, 82 FCC 2d 178 (1980), aff'd, New York State Commission on Cable Television v. FCC, 669 F.2d 58 (2d Cir. 1982) (preempting state franchising requirements for applicable to wireless cable); Preemption of Local Zoning Regulation of Satellite Earth Stations, IB Docket No. 95-59, Report and Order, Further Notice of Proposed Rulemaking, FCC 96-78 (rel. March 11, 1996) (supporting preemption of local regulation of satellite antennas).

Respectfully submitted,

PACIFIC BELL

A handwritten signature in cursive script, appearing to read "Sarah Rubenstein", is written over a horizontal line.

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